IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

R.S.A. No.1581 of 2007 (O&M)
Date of Decision : 11.9.2007

Sewak Singh

.....Appellant

Versus

Gurdev Kaur & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. D.S. Pheruman, Advocate
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below decreeing the suit for specific performance filed by the plaintiff respondents.

The learned trial Court on appreciation of evidence brought on record, recorded a finding that the parties had entered into an agreement to sell and further that the plaintiff respondents were willing and always willing to perform their part of contract. The suit was accordingly decreed.

The appellant defendant filed an appeal. During the pendency of the appeal two applications were moved, one under Order 6 Rule 17 C.P.C. for amendment of the written statement and second under Order 41 Rule 27 C.P.C. for leading additional evidence.

The learned lower appellate Court was pleased to dismiss the application for amendment of the written statement. However,the application moved under Order 41 Rule 27 C.P.C. was allowed and

the parties were permitted to lead additional evidence. However, the learned lower appellate Court on appreciation of evidence also concurrent with the finding recorded by the learned trial Court holding therein that the defendant appellant had entered into an agreement to sell and that the plaintiff respondents were always willing to perform their part of contract. The plea of the defendant appellant that it was actually a transaction of loan, was not believed.

Mr. D.S. Pheruman, learned counsel appearing on behalf of the appellant challenged the findings recorded by the learned lower appellate Court firstly on the ground that they were contrary in itself. The contention of the learned counsel for the appellant was that while dismissing the application moved by the appellant under Order 6 Rule 17 C.P.C., the plea of the agreement being forged and fabricated document could not be allowed to be proved by way of additional evidence. The plea that it was in fact a transaction of loan was not required to be specifically pleaded but was to be proved by way of additional evidence. The contention was that while dismissing the appeal the learned lower appellate Court has ignored the evidence on the ground that there was no pleading in the written statement to the effect this as the stand of the defendant appellant in the written statement was that of denial. However, this plea of the appellant cannot be accepted that there is contradiction in the order passed by the learned lower appellate Court. While appearing in the witness box the defendant appellant had admitted that the agreement to sell was executed between the parties and the evidence brought on record further shows that the same was read over and explained to the defendant appellant before the same was signed. In view of the evidence brought on record, the learned Courts below were

right in rejecting the plea of the defendant appellant that it was in fact a loan transaction, which was converted into agreement to sell. The judgments and decrees passed by the learned Courts below are based on appreciation of evidence. Concurrent findings recorded by the learned Courts below are not open to challenge, on the ground that the learned Courts below have failed to appreciate the evidence led by the parties.

No substantial question of law arises for consideration in this appeal.

Dismissed.

11.9.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**